

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THEATRICAL STAGE EMPLOYEES LOCAL 2

Charged Party

and

**EVENT MEDIA, INC. D/B/A COMPLETE CREWING
INC.**

Case 13-CD-185979

Charging Party/Employer

and

USW LOCAL UNION NO. 17U

Party-In-Interest

POST-HEARING BRIEF OF USW LOCAL UNION 17

I. Introduction

This proceeding arises out of dispute between two unions and an employer regarding the assignment of work traditionally shared by the two unions, both by virtue of contract language and practice. One union is the Theatrical Stage Employees Local 2, IATSE, AFL-CIO (hereinafter “the Stagehands” or “Local 2”). The other is United Steelworkers, Local 17U-Decorators (hereinafter “the Decorators” or “Local 17”). The Employer, Event Media d/b/a Complete Crewing (“Event Media”), provides labor to businesses that use hotel and convention center facilities for meetings and shows.

This case presents a startling example of a union using proscribed means to acquire work in violation of the Act. The work in question is the hanging soft goods, usually drape, at and adjacent

to stages in conference rooms and ballrooms in major downtown Chicago hotels.¹ It is undisputed that this work is covered by the collective bargaining agreement between Local 17 and Event Media. For at least a decade, this Employer has used both unions, depending on the circumstances, to perform this work. While the Stagehands performed most of the work, it is undisputed that the Decorators performed a significant fraction of the work, usually when it was performing other work in an exhibition hall in the same hotel. During this time, Local 17 accommodated the Employer's needs for work in hotels, and the Employer never complained about the work or the Local 17 members who were referred to it.

In June 2016, Local 17 filed a grievance because the employer did not use Local 17 members for to hang pipe and drape at the Cardiovascular Research conference at the Sheraton Hotel. Event Media resolved the grievance by paying union members for the hours they would have worked. In September and October 2016, Local 17 filed additional grievances over the failure of Event Media to contact the Local for referral of members to perform pipe and drape work. Rather than contest the grievances, the Employer informed the Stagehands that it would continue to assign work to Local 17 that was covered by Local 17's collective bargaining agreement. The Stagehands then threatened to strike, which led to this proceeding. Contrary to its position in October 2016, the Employer now states that it prefers to assign the work in question to the Stagehands. Notably, it offers no reason why it referred work to Local 17 for years prior to its about face in October. In the same vein, other than general complaints about the "culture" of Local 17 members, the Employer offered no specific examples to support its testimony that the use of labor from Local 17 undermined its ability to meet

¹ The drape is usually hung from metal frames that are assembled for that purpose. The work is often referred to as the hanging of "pipe and drape."

the needs of its customers.

The sequence of events in this case, therefore, supports the conclusion that the Stagehands put pressure on the employer to assign work that has been consistently performed by Local 17 to members of the Stagehands. This is exactly the type of conduct Section 8(b)(4) is designed to avoid. Therefore, this proceeding should be dismissed. In the alternative, as also set forth in the Argument section of this Brief, the statutory 10(k) factors also favor an award that allows Local 17 to continue to perform the work that it has historically performed for Event Media.

II. Statement of Facts

There are two facts that are key to resolution of this appeal. One is that the work in question has always been shared between the two unions. The other is that the members of Local 17 are fully capable of continuing to perform the work they have always performed hanging pipe and drape in hotel exhibition halls, ballrooms and meeting rooms.

1. Local 17 has had a contract with Event Media since 2006. Local 17 Exhs. 4,5. The full 2006 collective bargaining agreement covered “all floor marking (layout), installation and erection of drapes, fabric, canvas and structural materials used for installation.” It also covered “the complete dismantle of any work work installed under its jurisdiction at the end of each Show or Event . . .” Local 17 Exh. 5, p. 1-2. The contract also provided that “all floor hanging, installation and dismantle of drape higher than 8 feet and installation of 4' x 8' hanging signs shall be done with crew size mutually agreed upon. However, double sided banners of 8 feet or less in width shall be hung by crews of 2 persons. All other hanging signs using condor equipment shall be hung by 3 person crews.” Local 17 Exh. 5, p. 4-5. The contract allowed the union and the employer to vary the steward requirement based upon the nature of the job, Local 17 Exh. 5, p. 7 and to use decorator

helpers at a lower wage rate under agreed circumstances. Local 17 Exh. 5, p. 8. The contract provided start times at either 8:00 am or 10:00 am with overtime after eight and one-half hours. Local 17 Exh. 5, p. 5. The parties renewed this agreement in 2012. Local 17 Exh. 6.

Local 17 and Event Media are currently parties to a collective bargaining agreement. Employer Exh. 6. The "Union Work" provision of the agreement is identical to prior agreements. Employer Exh. 6, p. 1. The other provisions quoted above continued as well, except that the crew size for condor equipment was reduced from 3 to 2. Employer Exh. 6., p. 4. This contract took effect in 2014 and is effective through 2019.

Event Media has recognized the jurisdiction of Local 17 over the work set forth in the "Union Work" provision of these contracts. Local 17 member Dana Levar testified about the long history of working for Event Media and its predecessors in hotels and testified that this work preceded 2006. The jurisdiction of Local 17 is set forth in a document issued by Complete Crewing for "Chicago Convention Hotels." Employer Exh. 1. That document defines the jurisdiction of Local 17 as "responsible for pipe and drape, signage, banners, and bunting, in meeting rooms and for exhibits, and displays." It further states that in some situations "it is possible" drape could be set up by "stage labor" and further notes that there are exceptions for "certain hotel properties." Employer Exh. 1, p.3.

Consistent with this recognition of the work performed by Local 17, Local 17 submitted evidence of dozens of labor calls that it performed at Chicago hotels under its collective bargaining agreements during each of the last five years. Local 17 Exhs. 7, 8, 9, 14, 15. Union witness Dana Levar reviewed the photographs taken by the Stagehands of hotel ballrooms and testified about his experience hanging pipe and drape in each of the rooms during his career and the time period in

question. The testimony of the Employer's owner, Floyd Dillman, confirmed this point, even calling Levar's efforts admirable.

The evidence contradicts any claim by the Stagehands that they have performed "all production work for all events and productions put on by the Company" as stated in Local 2's letter of October 11, 2016. Employer Exh. 7. To the contrary, the evidence shows that members of Local 17 and the Stagehands worked side by side. These efforts were in the open and there is no basis for Local 2 to argue that it did not know they were occurring. If this were not enough to put Local 2 on notice that the work was shared, it should have known this from the public documents of the Employer. Just as the Employer's guide, Employer Exh. 1, refers the Decorator's jurisdiction over "pipe and drape," it refers to the jurisdiction of the Stagehands as "all things theatrical, such as rigging, lighting, audio and scenic." There is no evidence that the Stagehand ever contested this description of their work. Nor is there any documentary evidence that the Stagehands ever protested the work done by Local 17 prior to October 2016.

The shared jurisdiction over the work is confirmed by the history of the contracts between the Stagehands and Event Media. The current contract between Complete Crewing and the Stagehands mentions jurisdiction over drapery in Section 1(a) and drapery and pipe in Section 1(b). Local 17 Exh. 1, p. 1. The jurisdiction language of the 2010-2014 contract though, has a line drawn through it and contains an addendum which states that most of the jurisdictional language is not in effect. Local 17 Exh. 2, p.2, p. 10. Thus, there is a dispute between Event Media and Local 2 regarding the jurisdictional language of that contract and the scope of Local 2's work under that agreement. And the testimony was that the jurisdictional language of the agreement that preceded the 2010-2014 agreement was much less specific and did not include any reference to the pipe and

drape work traditionally done by the decorators. This history strongly undercuts any claim that Local 17 has enjoyed exclusive work jurisdiction over the hanging of pipe and drape in meeting rooms and ballrooms for productions at Chicago hotels.

The evidence also supports a second key fact: members of Local 17 are fully qualified to continue performing the work they have always performed. Local 17 has dozens of contracts in the industry that cover productions and exhibitions requiring the hanging of pipe and drape in the Chicago area. They have contracts with some of the same companies that the Stagehands have contracts with. Local 17 members are fully capable of work at heights and they carry out such work frequently, especially at McCormick Place. Union witness Dana Levar testified in detail regarding the skills that he and other decorators used in their work and he described how these skills were applied in hotel ballrooms and meeting rooms.

Local 17 does not deny that the member of the Stagehands have a variety of skills that they put to use in “all things theatrical” and that these skills include those necessary for proper installation of audio and lighting in hotel meeting and ballrooms. Stagehands, like members of Local 17, work at heights and must be familiar with the equipment and techniques necessary to hang lights, speakers and other equipment and material from high ceilings. And it may be that Stagehands can perform more tasks than members of Local 17. None of that, though, undermines the argument that Local 17 members have the skill and experience to do the work they have traditionally done.

III. Argument

A. The Proceeding Should Be Quashed Because the Stagehands Are Seeking to Acquire Work, Not to Preserve It.

The evidence in this case clearly showed that the work in question was historically shared

by the two unions. Both unions now have language in the work jurisdiction clauses of their collective bargaining agreements that covers the work in question. The documents authored by the employer indicate that Local 17 is entitled to the pipe and drape work in question. And, there is evidence of five years worth of labor calls for the work as well.

The evidence established that when Local 17 decorators were called to hang pipe and drape in exhibition halls that they were then used to hang pipe and drape for productions and meetings as well by Event Media. This is a logical demarcation of work that fits the needs of the Employer for a smooth work flow and that is consistent with historical patterns. Thus, the action taken by the Stagehands is action to acquire work. The grievances filed by Local 17 were grievances designed to preserve work that they had been performing under their contract for a decade. It is a fundamental tenet of the law in this area that actions by a union to preserve their existing work do not violate the law and do not provide a basis for a 10(k) hearing. See *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320 (1961). This rule has been applied in various different contexts by the NLRB when “the union’s members had previously performed the work in dispute and the union was not attempting to expand its work jurisdiction.” *Teamsters Local 107 (Reber Friel)*, 336 NLRB 518, 521 (2001). Thus, if a dispute arises out of an effort by a union to preserve its historical work, the proper course of action is to quash the notice of hearing. *IAM District 190 (SSA Terminal)*, 344 NLRB 1018 (2005); *IPTW (Recon Refractory)*, 339 NLRB 825 (2003). That is the appropriate result here.²

B. The 10(k) Factors Weigh in Favor of the Decorators.

² Local 17 did not file a formal motion to quash prior to the hearing in this case. It indicated in opening statement that it not believe the proceeding was properly brought because Local 17 was merely trying to preserve its historical work jurisdiction. The failure to utter these magical words, however, should not deny the Local the right to make this argument.

Assuming that the Board reaches the factors traditionally considered in 10(k) proceedings, what follows is a review of how these factors apply in this case:

1. Certifications and collective bargaining agreements

The parties stipulated that no NLRB certifications applied to the work in question. The collective bargaining agreements between Event Media and Local 17 have covered the specific work in question since 2006. As described above, the only thing that can be said with certainty is the most recent (2014) collective bargaining agreement between the Stagehands and Event Media covers the pipe and drape work at issue. Thus, this factor weighs in favor of Local 17.

2. Past practice

This factor weighs in favor of Local 17. The Employer's own documents state that Local 17 has jurisdiction over pipe and drape work and that the jurisdiction of the Stagehands is "all things theatrical" without any reference to pipe and drape at productions. Moreover, Local 17 introduced specific evidence of many labor calls for the work in question. This evidence was uncontested.

3. Area and industry practice

The evidence on this issue does not weigh in favor of either union. Local 17 witness DeGrado testified that the Union had approximately 80 contracts to hang pipe and drape at productions, exhibitions and trade shows in the Chicago area. Similarly, Local 17 witness Levar testified in detail about the work he and other decorators have performed for decades in hotels for productions and meetings.

4. Relative skills and training

The evidence on this point also weighs equally. The Local 17 witnesses testified regarding the skill of their members regarding the hanging of pipe and drape, the use of "soft goods" and "high

work.” There was no evidence that Stagehand members were more skilled or highly trained at this type of work. To be sure, Stagehands are skilled at the hanging, installation, operation and removal of equipment for audio and lighting effects. Local 17 does not now seek, nor has it ever sought to claim such work under its contract with Event Media. Thus, the lesser skills of Local 17 members in these categories are not relevant to the analysis in this case.

5. Economy and efficiency

The evidence on this point weighs equally. The main argument of the Employer and of the Stagehands was that the need to use Local 17 conflicted with a smooth flow of work because the pipe and drape work would occur between other work performed by the Stagehands. There are several facts, though, that undermine this claim. First, Local 17 has a contractual provision that allows an employer to request a four hour call. As explained by the Local 17 witnesses, this contractual provision allows an employer to fit the pipe and drape work into other set up activities. By contrast, the Stagehands have a minimum 8 hour call. Employer Exh. 1, p. 4. Second, the evidence was that Local 17 members were called to assist on production work when they were already on site to hang pipe and drape at trade shows and to perform booth work in the exhibition halls at hotels. This means that decorators can switch from job to another without slowing down set up for meetings. Finally, the evidence is that Stagehands are a much greater total expense than Decorators because they are typically present throughout the entire meeting or production to monitor the light and the audio. Employer Exh. 1, p. 6. This means that any economy advantage is very slight in absolute terms.

6. Employer preference

The Employer stated a preference for the Stagehands. This preference is not entitled to much

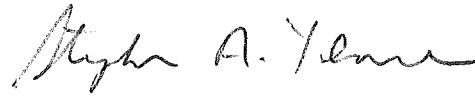
weight. First, the Employer acknowledged that decorator Dana Levar made an admirable effort to make sure that pipe and drape work was done efficiently and well on his jobs. The billing records indicate that Levar was often called to Event Media jobs in hotels. Moreover, the history is that Local 17 performed hotel meeting pipe and drape work for Event Media for 10 years without complaint. This history undermines the strength of the Employer's claim. Moreover, Local 17 accommodated the needs of Event Media in several ways. It used four hour calls with limited numbers of people. It sent Mr. Levar on most of the calls, at the request of the Employer. It has made no effort to claim any work except work that is the Local's traditional pipe and drape work.

In sum, the evidence shows that the work in question has been shared between the two unions and that the Stagehands do not have any evidence that justifies their claim to exclusive jurisdiction over the work. The 10(k) factors, therefore, weigh in favor of continued assignment of work to Local 17 members.

IV. Conclusion

As set forth above, the Notice of Hearing should be quashed. Alternatively, the Board should find that the 10(k) factors weigh in favor of assigning the work in question to Local 17.

Respectfully Submitted

A handwritten signature in cursive script, reading "Stephen A. Yokich".

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CERTIFICATE OF SERVICE

I, Stephen A. Yokich, an attorney, hereby certify that on November 18 , 2016, I caused the Post-Hearing Brief of Local Union 17 to be filed electronically with the NLRB and to be served upon the following by e-mail, at the following e-mail address:

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